

G. R. S. IX-5]

Previous references.

File No. 70-28

Serial Nos. 1-3

Later references.

92/61-32 (1-2)

1928-29

Law



P (16)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Three

Part B for Sep 1930

SUBJECT.

O.S. 1927-28 plaintiff vs Mrs  
Jaya Prammam a

By Secy  
23/8/30

G. R. S. IX-5]

Previous references.

1916.

Serial Nos. 28-29

File No. 104-16

(Muzar)

Later references.  
140-16-341

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 28-29.

Part B for Oct. 16.

SUBJECT.

Pch- from Sams Narsimharaj etc of

Narayana-Brown Bhatta at Belkote praying for

early order in the matter of certain arrears of pay due

from

By Sams. Mysore. No 911 D. 21-10-16

For the above for early attention in so

far as it relates to the claim of Sams

Samsaraj

No 912. D. Mysore Bhatta. (Samsaraj) of Belkote

W D 88-GPB-50,000-24-7-16

R. H. H. H.

100. 111 D. 29-11-16.

Serial  
No.

Letter No 11767 dated 28 12-18 from the  
Secy, State & J. Committee forwarding for  
retransmission to the At Judge the  
Show Cause notice issued in the above case

(1) The notice has to be signed by the  
Chief Secretary Draft of a letter to Dist  
Judge returning the notice put up. The case is

mp 10/12/18 posted to 15-1-29. The file may kindly

be marked to Ch Secy for signature

mp  
10/12

(2) Please put up in previous

papers -

h  
10/12

Done  
10/12

(3) The enclosed file which contains the papers relating  
to the original suit herewith put up - the copies  
of the report & decree were sent to the Trial Branch  
by the P.P. Bangalore. It was referred to d.R.  
for opinion as to the advisability of preferring an  
appeal & was returned to the Trial Secy with d.R.'s  
opinion - copy of which is flagged A

mp  
10/12/18

(4) Information may kindly be  
furnished as to whether the Govt.  
Advocate has been instructed to file  
an appeal in this case to the  
Chief Court as advised by the d.R.

H. Seeth

h  
12/12

(5) The whole file of papers was sent  
to the Mr. Secretary with the d.R.'s

2491  
8

Serial  
No.

opinion, to arrange for the appeal being  
filed.

No instructions were given to the  
Govt. Advocate.

13/12  
12/12

12/12

12/12

(6) Rule 109 of the legal affairs Rules, contemplate  
the orders of Govt sanctioning the filing of an appeal  
and Rule 110 requires the officer concerned to  
instruct the Govt Advocate if the appeal is to be  
filed in the Ch. Ct., as in this case. According to the  
P.O.D., the Secy Insurance Committee seems to have  
instructed the PPr to file the appeal. The Chief Secy  
is also a party to the suit & as such the appeal  
has to be filed on behalf of Govt also.

(7) Since in this case the PPr has been asked by  
the Secy Insurance Committee to file the appeal,  
& now that execution proceedings are instituted,  
PPr may be asked to appear in the R. case  
& get stay of execution pending the appeal.  
Draft of a letter to PPr put up for approval.  
The file has also to be sent to the Ch Secy for  
signature on the original show cause notice.

13/12/28  
13/11

2-12)

13/12

(8) Chief Secy drafted  
with copy for signature of Secy -

14/12

(9) Attached to & refs with  
complements

(10) In view of the fact that the appeal was  
submitted to the Govt. for sanction on 15/12

CHIEF SECRETARY  
14 DEC. 1928

ISSUE  
NOTE - Contn. sheet  
RESUBMIT.

24/7/2

Serial  
No.

2

To the Dist Judge, Bangalore

No P 3214 of 15-12-28.

Returns the above cause notice  
in execution case 10 of 28-29 with  
due endorsement of Service Bureau

3

To the P. pr. Bangalore.

No P 3215 of 15-12-28

Requests him to appear on  
behalf of the Chief Secy in the above  
case and to obtain stay of exe-  
cution under order 41 rule 5-46,  
of the code of civil procedure.

Resubmitted for <sup>orders</sup> ~~orders~~ regarding  
the filing of appeal to the Chief Const. (Refce.  
para 6 above)

mp  
15/12/28  
17/12

(L.R.)

2  
17/12

An appeal may be preferred

1st time

2  
17-12

I agree 2

only

19-12-28

2

No P 320  
for a 28-29

19/12

Draft 9.0 put up.

mp

Refce is invited to para 6 supra, where it is pointed out

20/12

for  
20/12

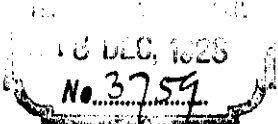
that under the Rules the Govt Advocate has to file the appeal  
in the court.

Yes, this can be done

in the court to the appeal.

2

24/12



4  
2491 p 8'00

App. F. III-2]

General and Revenue  
Secretariat.

File No.

of 192

Serial  
No.

The Secy Ins. Commission, has  
instructed the public prosecutor to file  
an appeal & it is not known whether  
the latter has communicated this  
instruction to the Govt. Advocate. The  
papers may therefore be forwarded  
to the Govt. Advocate immediately  
for information & necessary action

L-R/

21/12

7/12  
8/12  
21/12

forwarded immediately, now copy to  
Government Advocate in Mysore  
for information & necessary action

Secretary  
Law D

Returned, with compliments, to the Secretary  
Government, Law Department.

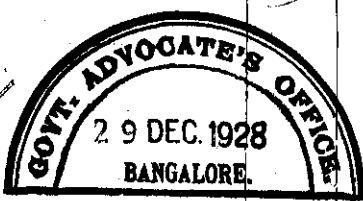
The Appeal in question (Viz., Regular Appeal  
No. 51 of 1928-29 on the file of the High Court  
Mysore) has been heard and disposed of and a copy  
of the Judgment has been sent to Government with  
this office letter No. 41 dated the 12th July 19

M. Hanumanth Rao  
Government Advocate  
2/7/1930.

NOTE—Contn. Sheet.

Me 19/9  
Mease put me  
copy of the opinion  
also in  
Shad. M. 19/9  
WD 02714-1928-30,000-18-4-28

95 of 27  
929 K. Decem-ber 1928



20 May 3/30-37  
9 12.7.1930  
(Four files)

14/7/30

Law

14/1

D. 20]

OFFICE OF THE SECRETARY,  
MYSORE STATE LIFE INSURANCE COMMITTEE,

No. 11767  
ac 2

Bangalore, dated... 8th December 1928.

FROM

~~XXXXXXXXXXXXXXX~~

The Secretary, Mysore State Life Insurance Committee,  
Bangalore.

To

N. MADHAVA RAO, Esq., B.A., B.L.,

Chief Secretary to the Government of  
His Highness the Maharaja of Mysore,  
BANGALORE.

SIR,

Os. 1 of 27-28 Plaintiff : Mrs. Jayapurniammal.

With reference to the enclosed notice, in duplicate, received through you, from the District Judge, Bangalore Division, Bangalore, in Ex. 10 of 28-29, I have the honor to inform you that a similar notice in duplicate was served on this office by the District Judge, Bangalore, and this was returned with endorsement of service, noted on the original, with the intimation that the Public Prosecutor has been requested to file an appeal and that the execution proceedings may be ordered to be stayed pending decision of the case in appeal. The Public Prosecutor has also been requested to take necessary action for staying the proceedings of the execution of the decree. In these circumstances, the notice herewith returned may be arranged to be retransmitted to the Court.

I have the honor to be,

Sir,

Your most obedient servant,

Deputy Secretary,  
Insurance Committee.

Notice to show cause.  
why execution should  
not be issued.  
(O. 21. r. 22.)

Form No. 27 (Civil)

20 ✓  
The Chief Secretary  
C. Secy. of Mysore  
Bangalore

IN THE COURT OF *the District Judge Bangalore*  
AT

SUIT NO. *1* OF 1927-1928  
EXECUTION CASE NO. *10* OF 1928-1929

*Jayaramanna mal*

Plaintiff

Vs.

*The Secretary Mysore  
State Life Insurance Co. Ltd.  
Bangalore*

Defendant

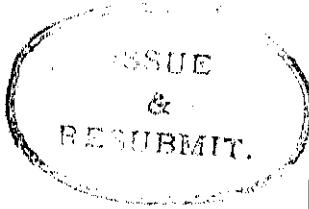
Whereas *the above named - Decree Holder*  
has made application to this Court for execution of decree in suit No. *1/27.28*  
on the allegation that ~~the~~ said decree has been transferred to him  
by assignment, this is to give you notice that you are to appear before this Court  
*(Assignment due to D.H. is 24.30.11-0)* on the *15<sup>th</sup>* day of  
*January* 1929, to show cause why execution should not be  
granted.

Given under my hand and the seal of the Court, this *5<sup>th</sup>* day of *December* 1928

WD 0293-GPB-7,000-31-5-27

*S. P. Sahasabhatta, J.*  
Judge.  
*Shree. S. S. S.*

SUBJECT.....



Diary No. of letter replied to.....

*I*

Section *Law*

File No. *70-28*

Serial No. *2*

No.

*3244 (C)*

General and Revenue Secretariat

( )

the

192

To

*The District Judge...*  
*Bangalore*

Date of issue.....

*15/12/28*

Sir,

Signed by.....

*M. N. B.*

*I am directed to*

*return herewith the show*

*cause notice in Execution*

*Case 10 of 28-29, with due*

*endorsement of service thereon.*

*I have etc*

st of enclosures.....

*R*

*For Secy to Govt*

Copied by.....

*205/12*

*M*

*10/12*

*M*

*10/12*

Examined by.....

*over*

SUBJECT.....

ISSUE  
&  
RESUBMIT.

II

Section *Law*

File No. *70-28*

Serial No. *3*

Diary No. of letter replied to.....

No.

*215*

General and Revenue Secretariat

the

192

To

*The Public Prosecutor  
Bangalore*

Date of issue.....

*15/12/28*

Sir,

Signed by.....

*W. H. S.*

I am to request you to  
appear on behalf of the  
Chief Secretary in Execution  
of Off. 28. 29 on the file of the  
District Judge, Bangalore, in  
Hrs. Jagadurumanna has  
applied for execution of a  
decree obtained by her a  
Government on O.S. 10877  
~~Since the~~ and to obtain  
of execution under order  
rule 5-cl(2) of the Code

st of enclosures.....

Copied by.....

*1/1/29*

Examined by.....

over

of Civil Procedure.

Shave at

m

for Secy to Govt

mp

Law Dept

10/12

am

10/12

Opinion regarding the advisability of ~~making~~  
an appeal against the judgment and decree in  
O.S. 1 of 27-28 at Mysore 5

App. F. III-2]

General and Revenue  
Secretariat.

~~Law~~ File No. 61 of 1928.

Serial  
No.

The question is about the advisability of appealing against the judgment and decree passed by the District Judge, Bangalore in O.S. 1 of 27-28, a suit filed by one Jayaswaminath against the Secy, Mysore State Life Insurance Committee as the 1st defendant and the Chief Secy as the 2nd.

The suit was for recovery of Rs 2000/- being the amount due on the life policy of Mr. Joseph Pillay - deceased husband of the plaintiff. The claim was mainly defended on the point that the contract of insurance was unenforceable on account of the acceptance being obtained by a fraudulent concealment of material facts relating to the deceased's continued ill health.

The District Judge, while conceding that the deceased had occasionally suffered from dysentery, fever, indigestion and rheumatism, has held that there is no wilful misstatement or concealment of any material fact on the part of the insurer which could vitiate the contract and consequently he decreed the suit with costs.

The law on the point is thus stated in 17 Halsbury page 650, :-

"Life insurance like marine and fire insurance is a contract ubi periculum

NOTE—Contn. Sheet.

General and Revenue  
Secretariat.

File No.

of 192 .

Serial  
No.

fidei and the general principles of law as to misrepresentation and concealment which govern marine insurance apply also to life insurance, except so far as they may be excluded or modified by the terms and conditions of the policy. The policy is therefore avoided not only by fraud, but also by the concealment or misrepresentation of a material fact, whether or not it caused or was in any way connected with the death of the assured, and further, the question whether the matter concealed or misrepresented is material is a question of fact, namely whether the matter represented or concealed was such as would influence the mind of a reasonable and prudent insurer in accepting or declining the risk."

A life insurance contract is usually based on a statement or declaration signed by the assured which together with the policy is taken as the basis of the contract. The declaration and the policy must be read together.

A declaration may be so framed as expressly to define and limit the rights of the insurer as to the communication and materiality of facts and to exclude any effect upon the contract from an innocent misrepresentation.

NOTE—Contn. Sheet.

General and Revenue  
Secretariat.

File No. of 192 .

Serial  
No.

or non disclosure of a matter not specified in the declaration (Jones v Provincial Insurance Co: 1851 3 C.B. N.S. 668 - 140 E.R. 662). It is also clear that where the policy provides only against intentional misstatement, an innocent misrepresentation in the declaration though the latter is made the basis of the policy will not avoid it. In Fowkes v Manchester & London Assurance Agency (1863) 3 B & S 917 = 12 page 343, the declaration contained a proviso that "if any statement in the declaration which declaration should be considered as much a part of the policy as if the same had been actually set forth therein, were untrue or if the assurance by the policy should have been effected by or through any wilful misrepresentation, concealment or false averment whatsoever or if the insured should go to any place beyond limits of Europe etc, the policy should be void and all moneys paid in respect thereof should be forfeited". The proposal and declaration contained the usual particulars and proceeded as follows:- "I do hereby declare that the above written particulars are correct and true throughout and hereby agree that this proposal and

NOTE—Contn. Sheet.

General and Rev. Secy.  
Secretariat.

File No.

of 192

Serial  
No.

declaration shall be the basis of the Contract and if it shall hereafter appear that ~~if~~ any fraudulent concealment or designedly untrue statement be contained therein, then all the money which shall have been paid on <sup>upon</sup> the assurance made in or hereof shall be forfeited and the policy granted in respect of such assurance shall be absolutely null and void. The two <sup>of the</sup> questions that the proposer had to answer were (i) Have you ever been afflicted with gout and (ii) Has your life been proposed at any other office & if so has it been accepted & at what rate. To the first the answer was 'No' & to the second it was, "it has been proposed & accepted at the ordinary rate". It also appeared that it has been proposed at ~~an~~ office and declined and that at another office ~~where~~ the proposer had been ~~examined~~ by the medical man and approved but ~~no~~ further had been done. It also appeared that before the proposal, he had a slight attack of suppressed gout. The Court held that the policy & the declaration must be read together and so reading the policy was not ~~to be~~ avoided by an untrue statement in the declaration unless

NOTE—Contn. Sheet.

Serial  
No.

designed to ensure and that though the answer regarding gont cannot be considered to be untrue if the person had not been sensibly afflicted with gont, but merely had some symptoms which a medical man could detect as denoting the presence of gont in the system, but that the answer as regards previous assurance was a suppression of a material fact. This case was followed in *Hemmings v Sceptre Life Ass'n* (1905) 1 Ch 365 which was a case wherein a misstatement as to age had been made.

In the present case the declaration is somewhat similar to the one in *Forbes* and is as follows:- I do hereby declare that the proposals, statements and those made me to the medical officer are true to the best of my knowledge and belief and that I have not withheld or concealed any circumstance with regard to which information has been required from me. I agree that the foregoing statements shall be the basis of the proposed contract for an insurance on my life and that if it shall hereafter appear that I have wilfully made any untrue statement or have

General and Revenue  
Secretariat.

File No.

of 192 .

Serial  
No.

fraudulently concealed any circumstance which I ought to have made known, then all the premiums which shall have been paid under the said Contract shall be forfeited and the Contract rendered absolutely null and void."

To the question whether the applicant ever suffered from any complaint of the head — a severe headache, fits, insanity etc, the answer is 'No' and the same is the answer to questions relating to fever such as malaria, typhoid etc. and to indications of rheumatism or nervous disease. The learned District Judge, as has been pointed out, concedes that it is true that the deceased had occasionally suffered from dysentery, fever, indigestion and rheumatism but seems to hold that the insured is not bound to mention every trivial attack of such diseases and that omission on his part to mention them is not fraudulent misrepresentation or concealment of fact. This conclusion, ~~the learned Judge~~ ~~is reached~~ ~~by the learned Judge~~ ~~mainly~~ ~~from the fact that the proximate cause of the death is none of these diseases but apoplexy and paralysis.~~ But the law

NOTE—Contn. Sheet.

General and Revenue  
Secretariat.

File No.

of 192

Serial  
No.

on the point, as has been already quoted from Halsbury is clear & that is that policy is avoided by concealment or misrepresentation of material facts whether or not they were in any way connected with the Cause of death. That the facts about the former illness are material is clear from the Case of *Caremore v British Equitable Assurance Co.* (1860) 29 L.J.C.P. 160.

The District Judge has not correctly appreciated the facts of the Case. He has not paid due regard to Exhibit XXIX the Certificate granted by ~~Dr~~ Gnanapriam showing that the deceased was treated for a threatening attack of apoplexy. The Judge seems to think that the assured was not bound to disclose this information simply because there is no specific question relating to it in the proposal. ~~The~~ A copy of the proposal is not in the records & I cannot say whether the Judge is right but anyhow the question viz Is there any indication of a tendency to nervous diseases? Especially Insanity, Paralysis, Apoplexy or Epilepsy?, is sufficient to draw the attention of the assured & his answer to it in the relative cannot

NOTE—Contn. Sheet.

General and Revenue  
Secretariat.

File No.

of 192

Serial  
No.

but be held to be a wilful nondisclosure  
sufficient to avoid the Contract.

Under these Circumstances, I <sup>am of opinion</sup> ~~submit~~  
this is a fit case for preferring an appeal  
to the Chief Court.

The Judgment was pronounced on 28<sup>th</sup>  
August 1928 and Copy appl<sup>n</sup> was filed on  
31<sup>st</sup> August. Copies were given to the P.P. on 31-10-28. Including the time during which  
the required sheets were not furnished,  
the last day for filing the appeal will  
not be earlier than the 15<sup>th</sup> January 1929.

*[Signature]*  
28/11/28

NOTE—Contn. Sheet.